(1)

Supreme Court, U.S.
FILED

991151 DEC 13 1999

OFFICE OF THE CLERK

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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Donald P. Parks - PETITIONER

VS.

United States of America et al. - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court Of Appeals for the Eleventh Circuit

# PETITION FOR WRIT OF CERTIORARI

Donald P. Parks
2325 S.W. 11th St
Boynton Beach, Florida, 33426-7404

(561) 737-1384

37pp

## QUESTIONS PRESENTED

I. Amendments I to X of the Constitution (the Bill of Rights) protect the citizens from the government. Retained by the people, specifically in Amendment IX, is the fundamental right to have understandable laws* and convenient access to those laws.

II. The Preamble to the Constitution states that the purpose of the Constitution is to "promote the general Welfare...". The complex legal system now in existence does not "promote the general Welfare" but rather places the citizens in bondage to the government(s) and the legal profession in violation of Amendment XIII.

III. Citizens, when acting pro se, have a fundamental right to bring before the Courts suits to protect their Constitutional Rights. Refusal of any case based on correctable errors in court procedure constitutes a cruel and unusual punishment specifically forbidden in Amendment VIII of the Constitution.

* The "law", for purposes of this petition, is defined to include all laws, statutes, rules, regulations, ordinances, and other expressions of any elected, appointed, or hired person that are binding on any citizen of the United States; all documents and computer programs that define the meanings of these laws, statutes, rules, regulations, ordinances, and other expressions; and all documents and computer programs that define how these laws, statutes, rules, regulations, ordinances, and other expressions are to be enforced.

## LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows:

Denise Dytrych
County Attorney, Palm Beach County
P.O. Box 1989
West Palm Beach, FL. 33401

Janet Reno
U.S. Attorney General, Department of Justice
10th and Constitution Ave N.E.
Washington DC 20530

Bob Butterworth
Attorney General, State of Florida
PL 01 Capitol
Tallahassee, FL. 32399

George P. Roberts, Jr
Roberts & Reynolds, P.A.
470 Columbia Drive
Suite 101C
West Palm Beach, FL 33409

Representing:
Boynton Beach City Government and employees:
Robert Wandelt (Code and License Inspector)
Scott Blaise (Code Enforcement Unit Supervisor)
Marshall Gage (Chief of Police)
John Wildner (Superintendent, City Parks Division)
Michael J. Pawelczyk (Assistant City Attorney)
Dale Sugarman (Former Acting City Manager)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the 4th appeal No. 99-10257 appears at Appendix A to the petition and is unpublished.

The opinion of the United States Court of Appeals for the 3rd appeal No. 98-5464 appears at Appendix B to the petition and is unpublished.

The opinion of the United States Court of Appeals for the 2nd appeal No. 98-4038 appears at Appendix C to the petition and is unpublished.

The opinion of the United States Court of Appeals for the 1st appeal No. 97-4818 appears at Appendix D to the petition and is unpublished.

The opinion of the United States District Court No. 97-8227-CIV-FERGUSON appears at Appendix E to the petition and is unpublished.

## JURISDICTION

The dates on which the United States District Court and the Court of Appeals decided my cases were:

Original case: No. 97-8227-CIV-FERGUSON.....April 3, 1997
First Appeal: No. 97-4818.....December 23, 1997
Second Appeal: No. 98-4038.....September 11, 1998
Third Appeal: No. 98-5464.....March 25, 1999
Forth Appeal: No. 99-10257.....November 22, 1999

The jurisdiction of this Court is invoked under 28 U.S.C @ 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Declaration of Independence, the Preamble to the Constitution and, the Constitution of the United States of America as noted in each section of this petition.

## STATEMENT OF THE CASE

Reading from the Declaration of Independence the petitioner contends that:

1. The Law, because of its complexity and limited accessibility has become "destructive of these Ends", the Ends being the rights of Life, Liberty, and the Pursuit of Happiness and constitutes a "cruel and Unusual punishment"; prohibited in Amendment VIII of the Constitution;

2. The Law "evidences a Design to reduce them under absolute Despotism" and, while Amendment VI of the Constitution guarantees the "assistance of counsel", it does not authorize a system so complex that counsel is required;

3. It is his right and duty ("it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security...") to bring this complaint before the Court and it is the obligation of the Court, whose officers are sworn to uphold the Constitution, to hear and rule on this complaint as provided for in Article VI of the Constitution;

Reading from the Preamble to the Constitution the petitioner contends that:

4. "provide for the common defense, promote the general welfare, and secure the blessings of liberty" includes not only a military defense but also a legal defense as provided for in Amendment IX of the Constitution;

Also, the petitioner contends that:

5. The United States, from a military point of view is among the strongest nations of the world but the legal might of its citizens has been greatly diminished because of the number of laws and the complexity of these laws that have been passed since the adoption of the Constitution;

6. The Government(s) of the United States of America provide for a standing military establishment equipped and trained to respond quickly to any emergency, domestic or foreign, but the Government(s) have neglected to provide the means for its citizens to respond QUICKLY and EXPERTLY to any legal emergency in their lives except at great personal risk and cost;

7. The Government(s) of the United States of America have invested untold billions of dollars into developing and deploying arms for its military but has not invested a significant fraction of that amount into developing and deploying a legal information system that would allow the average American citizen to compete on any equal terms with any body of government;

8. Any appeal involving a "Claim of Unconstitutionality" is unique; either because of its subject matter, the identify of the persons involved, or its place in time and must be heard by the court as provided in Amendment I.

9. The information technology is available and it is both possible and practical to create a "Department of Legal Information" whose function would be to:

- Establish a central data base containing the law,
- Set up cross indexes to all entries in the data base,
- Maintain the data base as the law changes,
- Provide free and anonymous 24 hour a day, 365 days a year high speed electronic access to the data base,
- Fund the development of programs that make access to the data base as "user friendly" as possible and place these programs in the public domain,
- Fund research projects to improve the accessibility and utility of the contents of the data base,
- Provide software that will enable any citizen to write a technically correct law suit,
- Fund the development and free distribution of simulators that allow the public to test the legality of activities.

10. It is a fundamental right under Amendment IX for American citizens to have convenient access to the law and to have that law in an understandable form.

## PETITIONERS CHRONOLOGICAL HISTORY OF THE CASE

The following chronological history (Appendix F) is presented to demonstrate to the court that the petitioner has made a good faith attempt to observe the rules of the court.

I. April 1, 1997 Original case, No. 97-8227-CIV-FERGUSON, filed; labeled "Claim of Unconstitutionally"

April 3, 1997 Case dismissed

Why was the case dismissed? Probable reasons may be:

A. The case was considered a joke because it was filed on April 1.

B. Did Judge Ferguson actually read and understand the case as filed or did he just sign off on work done by a legal assistant in his office? If the case was only reviewed by a legal assistant there is a probable Conflict of Interest on the part of the legal assistant because of the subject addressed by this case.

C. If Judge Ferguson did actually read and understand the case and subsequently dismissed it why didn't he state in his dismissal order that the case involved a "Claim of Unconstitutionally".

II. May 1, 1997 First Appeal, No. 97-4818 , filed; labeled "Claim of Unconstitutionally"

The first appeal of this case was dismissed because the petitioner failed to file his Brief and Record Excerpts in time. The original case, as filed, was only 6 pages long. Judge Fergusons' dismissal order was 1 page. Because the rules for the Court of Appeals specified a maxim length for the briefs it appeared that briefs were necessary only for cases that were hundreds or thousands of pages long. Since the case had never been heard in court there was no record therefore there were no record excerpts.

The court recognizes that the filing of Briefs and Record Excerpts is a very complicated matter. On page 89 of the **FEDERAL RULES OF APPELLATE PROCEDURE** *with* ELEVENTH CIRCUIT RULES *and* **INTERNAL OPERATING PROCEDURES** we read:

> *c. Sample Briefs and Record Excerpts - Upon request, the clerk's office will loan to counsel sample briefs and record excerpts which comply with the prescribed form.*

Here we see that "counsel", supposedly persons trained in the legal profession, can receive help from the court in the form of sample briefs and record excerpts. There is NO help offered for the citizen who is filing pro se. Amendment XIV of the Constitution provides for "equal protection of the laws".

When notified that the brief and record excerpts were necessary the petitioner made a good faith attempt to provide them as follows:

June 24, 1997 Memo from 11th Circuit Court of Appeals
Certificate of Readiness of Record on Appeal

July 29, 1997 Memo from 11th Circuit Court of Appeals
Record complete. Notice of 40 days to file brief and record excerpts.

September 25, 1997 Memo from 11th Circuit Court of Appeals
Notice that I must file brief, record excerpts, and motions to file out of time.

October 7, 1997 Memo from 11th Circuit Court of Appeals
Notice that I must file a brief on or before October 14, 1997.

October 12, 1997 Response to letter of 10-7-1997.
It was petitioners position that the text of the appeal should have been sufficient.

October 13, 1997 Brief sent to11th Circuit Court of Appeals

October 16, 1997 Memo from 11th Circuit Court of Appeals
Record excerpts, and motions for leave to file record excerpts and brief out of time required.

October 16, 1997 Memo from 11th Circuit Court of Appeals
Brief conditionally filed, needed proof of service.

October 28, 1997 Letter from 11th Circuit Court of Appeals
(Received by me Saturday, November 1, 1997).

November 3, 1997 Telephone call to 11th Circuit Court of Appeals for additional information about record excerpts.

November 4, 1997 Record excerpts and petition to file out of time sent to 11th Circuit Court of Appeals.

November 12, 1997 Letter from 11th Circuit Court of Appeals
Problem with record excerpts. Note: letter indicated that I had an additional 14 days to file corrected record excerpts.

November 13, 1997 Telephone call to 11th Circuit Court of Appeals
Request further information about problems with record excerpts.

November 17, 1997 Sent revised record excerpts to 11th Circuit Court of Appeals.

December 23, 1997 Orders from 11th Circuit Court of Appeals
Motion to file out of time denied, Case dismissed.

December 31, 1997 Second Appeal No. 98-4038 filed.

September 11, 1998 Order for 11th Circuit Court of Appeals
Appeal dismissed, lack of jurisdiction.

September 22, 1998 Third Appeal No. 98-5464 filed.
Requested hearing before full court.

March 25, 1999 Third Appeal dismissed

April 1, 1999 Forth Appeal filed
Requested hearing before full court

November 22, 1999 Forth Appeal dismissed

December 10, 1999 This appeal prepared.

## REASONS FOR GRANTING THE PETITION

Therefore, the petitioner sets forth the following reasons for granting the petition:

I. Every case that comes before the court(s) claiming a Constitutional issue is unique; either because of its subject matter, the identify of the persons involved, or its place in time. It must follow that every Constitutional claim must be heard by the court(s). It must also follow that if the court(s) refuse to hear any Constitutional claim for any reason then the reason put forth by the judge(s) of the court sets the Constitution at naught.

II. Because NONE of the previous orders and appeals dismissing this case stated that a "Claim of Unconstitutionally" was involved they are void and that all rules regarding time limits of filing are suspended in this case.

III. The most fundamental right of any citizen who is charged with the obedience of the law is for the law to be understandable and be readily available. As the number of laws is multiplied and as the number of court cases that interpret these laws is multiplied there must be a counter balance to multiply the citizens understanding and access to the law. Measures that were adequate two hundred years ago when there were relatively few laws are no longer adequate. Electronic technology now exists, and has existed for over twenty five years, that can bridge this gap. The court should recognize this fundamental right guaranteed by the IX Amendment of the Constitution.

## PROPOSED RELIEF

Since neither the District Court nor the Eleventh Circuit Court of Appeals have heard this case the petitioner does hereby appeal to this Court to:

I. Hear and make a ruling on the Constitutional issues involved.

II. Issue a Summary Judgment that the Government(s) named in this suit have failed to provide a suitable legal defense for the citizens of the United States and that the Government(s), either individually or jointly, will immediately fund the development of a system as described in STATEMENT OF THE CASE paragraph 9 .

III. Allow all issues not settled in the preceding paragraph II of this section to be heard by a lower district court.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s Donald P. Parks
December 9, 1999

Donald P. Parks
January 5, 2000

App. A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 99-10257

---

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
STATE OF FLORIDA, et al.,

Defendants-Appellees.
(Filed Nov. 22, 1999)

---

Appeal from the United States District Court
for the Southern District of Florida

---

Before COX and WILSON, Circuit Judges, and FAY, Senior Circuit Judge.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. The appellant's forth notice of appeal, filed April 1, 1999, was untimely because it was filed more then 60 days after the entry of the April 9, 1997 order he appeals. See Fed.R.App.P 4(a)(1)(B); Jestet v. United States, 714 F.2d 97, 98 (11th Cir. 1983). We note, for the second time, that the appellant may not seek reinstatement of his earlier appeal, No. 97-4818, by filing successive notices of appeal in the district court. The district court does not have jurisdiction over such a request.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 98-5464

---

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
STATE OF FLORIDA, et al.,

Defendants-Appellees.
(Filed Mar. 25, 1999)

---

Appeal from the United States District Court
for the Southern District of Florida

---

Before CARNES, BARKETT and HULL, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. Appellant's notice of appeal, filed September 22, 1998, was untimely because it was not filed within 60 days of April 9, 1997, the date of entry of the order he appeals. See Fed.R.App.P. 4(a)(1); Sanders v. United States, 113 F.3d 184, 186 n.1 (11thCir. 1997). We note that Appellant's September 22, 1998 notice was the third notice of appeal he has filed in this matter. His first notice was timely filed, but the Clerk of this Court dismissed the appeal for want of prosecution on December 23, 1997. (case number 97-4818). It is manifest that by filling a third notice of appeal in the district court, Appellant

sought reinstatement of his earlier appeal, case number 97-4818. Appellant may not obtain his desired relief by filing successive notices of appeal in the district court. The power to reinstate an appeal previously dismissed for failure to prosecute lies with the Court of Appeals, not the district court. Thus, to the extent that relief remains available to Appellant, he may attempt to obtain relief by filing a motion to reinstate his prior appeal with the Clerk of this court, pursuant to Eleventh Circuit Local Rule 27-1(c)(11).

App. C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 98-4038

---

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
STATE OF FLORIDA, et al.,

Defendants-Appellees.
(Filed Sept. 11, 1998)

---

Appeal from the United States District Court
for the Southern District of Florida

---

Before ANDERSON, EDMONDSON and DUBINA, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. Appellant's notice ofappeal, filed more then sixty (60) days after the entry of the April 9, 1997, order, was untimely. See Fed.R.App.P.4(a)(1), 26(a); Jester v. United States, 14 F.2d 97, 98 (11th Cir. 1983).

App. D 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 97-4818

---

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA;
STATE OF FLORIDA; PALM BEACH;
ROBERT WANDELT, Code and
License Inspector, et al.,

Defendants-Appellees.
(Filed Dec. 23, 1997)

---

On Appeal from the United States District Court for the
Southern District of Florida

---

ORDER:

Motion of the Appellant to file his brief and record excerpts out of time isdenied.

s/_____.
Chief Judge

App. D 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 97-4818

---

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA;
STATE OF FLORIDA; PALM BEACH;
ROBERT WANDELT, Code and License Inspector, et al.,

Defendants-Appellees.
(Filed Dec. 23, 1997)

---

On Appeal from the United States District Court for the
Southern District of Florida

---

ENTRY OF DISMISSAL

Pursuant to 11th Cir.R. 42-1(b), this appeal is hereby dismissed for want of prosecution because the appellant has failed to file its timely appellant's brief and record excerpts within the time fixed by the rules, effective this 23rd day of December, 1997.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit
By: /s/ Ola Solomon
Deputy Clerk
FOR THE COURT - BY DIRECTION
ORD-40 5/91

App. E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON

DONALD P. PARKS

Plaintiff-Appellant,

versus

UNITED STATES GOVERNMENT, et al.,
Defendant.

(Filed April 4, 1997)

_____/

THIS CAUSE is before the Court sua sponte. Review of the file indicates that the complaint filed in this case fails to state a cause of action upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Accordingly, it is

ORDERED AND ADJUDGES that this case is DISMISSED without prejudice.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of April, 1997.

/s Wilkie D. Ferguson, Jr.
UNITED STATES DISTRICT JUDGE

copies provided:
Council of record

UNITED STATES DISTRICT COURT
Southern District of Florida
299 East Broward Boulevard
Fort Lauderdale, FL 33301
954-356-7075

CLERK, U.S. COURT OF APPEALS Date: June 24, 1997
Eleventh Judicial Circuit USDC # 97-8227-CV-WDF
56 Forsyth Street USCA # 97-4818
Atlanta, Georgia 30303

IN RE: Parks v. USA Filed: June 28, 1997

==========

Certificate of Readiness of Record On Appeal

Pursuant to Fed.R.App.P. 11(c), the Clerk of the District Court for the Southern District of Florida hereby certifies that, as shown on the enclosed index, the record is complete for purposes of this appeal. The record (including the transcripts or parts thereof designated for inclusion and all necessary exhibits) consists of:

1 Volume of Pleadings

Sincerely,
Carlos Juenke, Court Administrator/Clerk

By: /s _____
Deputy Clerk

Please Acknowledge Receipt of Certificate of Readiness.
/s _____
Signature

App. F 2

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

July 29, 1997

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

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Pursuant to Fed.R.App.P. 12(c), be advised that the record is complete for purposes of appeal. APPELLANT'S BRIEF AND RECORD EXCERPTS ARE DUE WITHIN FORTY (40) DAYS FROM THIS DATE. In cross-appeals, the party who first files a notice of appeal is deemed the appellant unless the parties otherwise agree. See Fed.R. App.P. 28, 30, 31, and 32, and the corresponding circuit rules for further information on preparing briefs and record excerpts.

The Court has directed that pursuant to Fed.R.App.P 11(c) the record on appeal be assembled, indexed, and retained in the office of the district court clerk for use by counsel or parties in preparing appellant papers. Enclosed is an indexed copy of certified district court docket entries which shows court papers certified to this court as the record. Counsel of parties are requested to use this docket sheet and their own file copies of the court papers in preparing the brief and record excerpts. Counsel or parties may also review the record at the office of the district court clerk. Upon application to this court identifying the specific volumes requested, court reporter's transcripts of district court proceedings contained in the record may be released to counsel or parties. Please refer to the enclosed sheet for information on referencing the record.

Counsel or parties are urged to review these entries promptly. If the record is incomplete for purposes of appeal you should within fourteen (14) days request the district court to supplement the record [See Fed.R.App.P. 10(e)], and notify us that you have done so. (Please note that such a request does not itself interrupt or extend the briefing schedule established above). Upon notice that the appellee(s) brief(s) has (have) been filed, the record will be promptly sent to this office by the district court clerk. Accordingly, counsel or parties should ensure prior to that time that they have in their files copies of any court papers filed in the district court which they may need for appellate purposes.

Sincerely,

/s Miguel J. Cortez

Clerk

Reply To: Ola Solomon (404) 331-3836

Encl. Br-2

(6-97)

App. F 4

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

September 25, 1997

Donald P. Parks
2325 SW 11th St.
Boynton Beach, FL 33426-7404

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

---

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless the default(s) noted below have been corrected:

* File appellant's brief, together with a motion to file the brief out of time.

* File record excerpts as required by 11th Cir. R. 30-1, together with a motion to file the record excerpts out of time.

11th Cir. R. 42-1(b) also provides the "If an appellant isrepresented by appointed counsel, the clerk may refer the matter to the court for possible disciplinary action against counsel in lieu of dismissal."

Sincerely,
/s Miguel J. Cortez
Clerk

Reply To: Ola Solomon (404) 331-3836
c: District Court Clerk DIS-1 (3/94)

App. F 5

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

October 7, 1997

Donald P. Parks
2325 SW 11th St.
Boynton Beach, FL 33426-7404

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

---

This is to acknowledge receipt of your letter in which you state that no additional documents are required.

Sincerely,
/s Miguel J. Cortez
Clerk

Reply To: Ola Solomon (404) 331-3836

Pursuant to 11th Circuit rules, once the record on appeal is complete in he district court. Appellant should file a brief with the 11th Circuit. Therefore, pursuant to my letters of July 29, 1997 and September 25, 1997, failure to file a brief on or before October 14, 1997, your appeal will be DISMISSED. (See rules attached)

PRO-1 (1/92)

2325 S.W. 11th St.
Boynton Beach
FL 33426-7404
(561) 737-1384

October 12, 1997

Ola Solomon
Clerks Office
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

RE: 97-4818 Parks v. USA
DC DKT No.: 97-08227 CV-WDF

This case involves matters of the Constitution rights of the plaintiff and of most Americans. The appeal before you stated the Constitutional and other issues that the plaintiff is appealing to the court for resolution. Therefore, no other brief was filed nor does it seem reasonable, in this case, to require any additional documents. Also, according to your letter of July 29, 1997 it appears that the record has already been assembled which would indicate that no record excerpts are required.

Please continue to keep me informed about the progress of this case.

Thank You,

/s Donald P. Parks

App. F 7

2325 S.W. 11th St.
Boynton Beach
FL 33426-7404
(561) 737-1384

October 13, 1997

Ola Solomon
Clerks Office
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

RE: 97-4818 Parks v. USA
DC DKT No.: 97-08227 CV-WDF

RE: Your letter of October 7, 1997

Enclosed are five copies of the brief that you stated that I should file by October 14, 1997.

Please continue to keep me informed about the progress of this case.

Thank You,

/s Donald P. Parks

App. F 8

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

October 16, 1997

Donald P. Parks
2325 SW 11th St.
Boynton Beach, FL 33426-7404

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

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Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless the default(s) noted below have been corrected:

* File record excerpts as required by 11th Cir. R. 30-1, together with a motion to file the record excerpts out of time.

* File MOTION for leave of the Court to file appellant's brief out of time.

11th Cir. R. 42-1(b) also provides the "If an appellant is represented by appointed counsel, the clerk may refer the matter to the court for possible disciplinary action against counsel in lieu of dismissal."

Sincerely,
/s Miguel J. Cortez
Clerk
Reply To: Ola Solomon (404) 331-3836

c: District Court Clerk DIS-1 (3/94)

App. F 9

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

October 16, 1997

Donald P. Parks
2325 SW 11th St.
Boynton Beach, FL 33426-7404

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

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The brief filed by you in this appeal does not contain Proof of Service as required by Fed.R.App.P. 25(d).

Your brief will be conditionally filed, subject to receipt of seven (7) copies of a correct Proof of Service within fourteen (14) days. If you fail to file a corrected Proof of Service in compliance with Fed.R.App.P. 25(d) within that time the brief will be returned unfiled for failure to comply with the Rules. For appellants, this may result in dismissal of the appeal pursuant to 11th Cir. R. 42-1(b), while appellees would not be heard at oral argument, except by permission of the Court pursuant to Fed.R.App.P. 31(c).

Sincerely,
/s Miguel J. Cortez
Clerk
Reply To: Ola Solomon (404) 331-3836

Your brief is being held unfiled; also, please serve copies of the brief on the appellees.

BR-8B (6/96)

App. F 10

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

October 28, 1997

Dawn Bowen
U.S. Attorney's Office - So. Dist. of FL
99 N.E. 4th Street
Miami, FL 33132

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

---

Enclosed is a copy of appellant's brief.

Sincerely,
/s Thomas K. Kahn
Clerk

Reply To: Ola Solomon (404) 331-3836

Attention Mr. Parks: if the record excerpts are not filed by 11/3/97, the appeal will be dismissed.

2325 S.W. 11th St.
Boynton Beach
FL 33426-7404
(561) 737-1384

November 4, 1997

Ola Solomon
Clerks Office
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303
(404) 331-3836

RE: 97-4818 Parks v. USA
DC DKT No.: 97-08227 CV-WDF

RE: Your letter of October 28, 1997 (my need to file record excerpts).
RE: My telephone call to you of November 3, 1997.

Enclosed are five copies of the record excerpts that you stated in your letter that I need to file. Also, Enclosed is a petition to the Court for permission to file these documents late.

I am sending a copy the petition and of this letter to notify the listed parties of my action to allow them to comment if they so desire.

Please continue to keep me informed about the progress of this case.

Thank You,

/s Donald P. Parks

App F 12

UNITED STATES CIRCUIT COURT OF APPEALS
ELEVENTH CIRCUIT

DKT NO: 97-4818
DIST. CT. NO: 97-08227 CV-WDF

"Claim of Unconstitutionality"

MOTION to file the brief and record excerpts out of time.

Appellant Donald P. Parks
vs.
UNITED STATES GOVERNMENT, et al.,

The appellant is a private citizen with no formal legal training. Examination of the correspondence file of letters exchanged between the appellant and the Clerk's office will show that the appellant has been making a good faith effort to comply to the rules of the Court.

Therefore:

The appellant does hereby petition the Court to allow this brief and record excerpts to be filed past the normal allocated time.

/s Donald P. Parks
November 4, 1997

Donald P. Parks
2325 S.W. 11th St
Boynton Beach
FL 33426-7404
(561) 737-1384

App F_13

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

November 12, 1997

Donald P. Parks
2325 SW 11th St.
Boynton Beach, FL 33426-7404

RE: 97-4818 Parks v. USA
DC DKT NO.: 97-08227 CV-WDF

---

The record excerpts filed by you in the referenced appeal are deficient because they do not include the following items from the record as required by 11th Cir. R. 30-1:

* Index and/or indexing tabs
* Docket sheet of court from which case originated

One copy of your record excerpts has been filed, subject to receipt of five (5) copies of corrected record excerpts within FOURTEEN (14) DAYS from this date. If you fail to timely file corrected record excerpts the Court will determine whether these record excerpts should be stricken for failure to comply with the Rules. This may result in dismissal of this appeal pursuant to 11th Cir. R. 42-1(b).

Sincerely,
/s Thomas K. kahn
Clerk

Reply To: Ola Solomon (404) 331-3836

Insert a certificate of service and bound across the top with WHITE durable covers on the front and back.

Encl.

EXC-1 (12/94)

2325 SW 11th St.
Boynton Beach
FL 33426-7404
(561) 737-1384

November 17, 1997

Ola Solomon
Clerks Office
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303
(404) 331-3836

RE: 97-4818 Parks v. USA
DC DKT No.: 97-08227 CV-WDF

RE: Your letter of November 12, 1997 (revised record excerpts).
RE: My telephone call to you of November 13, 1997.

Enclosed are five copies of the record excerpts, revised as per your letter of November 12, 1997.

Please continue to keep me informed about the progress of this case.

Thank You,

/s Donald P. Parks

Supreme Court, U.S.
FILED
FEB 9 2000
CLERK

(2)

No. 99-1151

In The

# Supreme Court of the United States

DONALD P. PARKS,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,
STATE OF FLORIDA,
PALM BEACH COUNTY,
THE CITY OF BOYNTON BEACH,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Although Petitioner sets forth his inquiry in three paragraphs, the essential question presented by Petitioner, Donald P. Parks, is whether he has been deprived of a fundamental right to a free computerized legal database to be created and funded either by the federal, state or local government.

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## BRIEF IN OPPOSITION

Respondent, The City of Boynton Beach (Boynton Beach) respectfully believes that this Court lacks jurisdiction to grant a Writ of Certiorari because Petitioner, Donald P. Parks (Parks), failed to timely file his Petition and failed to timely file a notice of appeal to the Court of Appeals. Parks also lacks standing to bring a claim as alleged because there is no fundamental right involved, nor is there any right to be derived from Amendment IX to the United States Constitution. Finally, Parks raises a non-justiciable political question. Accordingly, Boynton Beach respectfully requests the Court to deny the Petition.

## JURISDICTION

Respondent, The City of Boynton Beach, believes that this Court lacks jurisdiction under 28 U.S.C. § 2101(c) to hear Park's petition because he did not timely file it within ninety days of the order of dismissal of his appeal by the United States Court of Appeal for the Eleventh Circuit on December 23, 1997.

## STATEMENT OF THE CASE

On October 7, 1996, Parks, a resident property owner of Boynton Beach, was cited for violations of the City building code.[1] When Parks did not comply with Boynton

[1] Ch. 15, Art. IX-15-120 §§ II.1, IV.1.B, IV.1.D, IV.1.H, V.1, and V.2., Boynton Beach City Code

Beach's request, a public hearing was held on December 18, 1996, which resulted in the issuance of a code enforcement order requiring compliance by February 1, 1997.

When Parks failed to fully comply by February 4, 1997, he was given notice of a second code enforcement hearing, to be held on February 19, 1997. Parks appeared at this hearing. The issue was tabled to allow further time for compliance. When it appeared that Parks had not fully complied, a third code enforcement hearing was scheduled for March 19, 1997.

On March 19, 1997, it appeared that Parks remained non-compliant, thus a certification of fine of twenty-five dollars per day from February 1, 1997, until compliance, was issued.

Parks' response was to file a suit, titled "Claim of Unconstitutionality", in the District Court for the Southern District of Florida on April 1, 1997. Joined as defendants were the "U.S. Government", "Florida State Government", "Palm Beach County Government", and the "Boynton Beach Government". Also named were a number of individual Boynton Beach city employees, including code enforcement officers Robert Wandelt and Scott Blasie; police chief Marshall Gage; parks superintendent John Wildner; assistant city attorney Michael Pawelczyk; acting city manager Dale Sugarman and others not yet identified.

Parks' complaint alleged that the law is so inherently complex as to render it unavailable, in violation of a fundamental right allegedly found in the Eighth, Ninth or Fourteenth Amendments to the United States Constitution. Parks, *inter alia*, requested relief in the form of a

court order requiring the government defendants to publish a computerized legal database allowing free, instantaneous access at all times.

On April 3, 1997, the district court, *sua sponte*, dismissed Parks' complaint without prejudice under *Fed. R. Civ. P.* 12(b)(6) for failure to state a cause of action upon which relief can be granted. Pet. App. E.

Parks filed a notice of appeal in the district court on May 1, 1997. On July 29, 1997, the Clerk of the United States Court of Appeals for the Eleventh Circuit issued a memorandum to counsel and parties noting that Parks' brief and record excerpts were to be filed within forty days, or by September 8, 1997. Pet. App. F 2. Parks did not file either his brief or record excerpts by this date.

On September 25, 1997, the Eleventh Circuit sent notice to Parks informing him that, pursuant to *11th Cir. R.* 42-1(b), he was required to file his brief, record excerpts, and motions for leave to file out-of-time within fourteen days, or suffer dismissal. Pet. App. F 4. A reminder letter was sent to Parks on October 7, 1997. Pet. App. F 5.

Parks then filed a brief that did not contain a certificate of service to opposing parties, record excerpts nor a motion for leave to file out-of-time. Pet. App. F 8, 9. On October 16, 1997, Parks was notified of the deficiencies and given an additional fourteen days, to November 3, 1997, to correct the deficiencies or suffer dismissal. Pet. App. F 8, 9. On November 4, 1997, Parks mailed a Motion to File Brief and Record Excerpts Out-of-Time. Pet. App. F 11. On November 17, 1997, Parks mailed his record excerpts.

On December 23, 1997, Parks motion for leave to file out-of-time was denied by the chief judge, and Parks' appeal was dismissed by the clerk upon direction of the court.[2] Pet. App. D 1, 2.

On December 31, 1997, Parks filed a second notice of appeal of the district court's April 3, 1997 order of dismissal, claiming a fundamental right to access to a free, computerized legal database. Resp. App. 1.

On April 7, 1998, the Eleventh Circuit requested the parties' respective positions on jurisdiction. Boynton Beach objected to jurisdiction under *Fed. R. App. P.* 4(a)(1)(B) because the second notice of appeal was filed more than sixty days after the district court dismissal.

On September 11, 1998, The Eleventh Circuit dismissed the second appeal for lack of jurisdiction. Pet. App. C. On September 22, 1998, Parks filed his third notice of appeal in the district court. Resp. App. 2. The Eleventh Circuit again requested the parties' respective positions on jurisdiction. Boynton Beach again raised Parks' failure to timely file a notice of appeal.

On March 25, 1999, the Eleventh Circuit dismissed Parks' third appeal for lack of jurisdiction since it was untimely under *Fed. R. App. P.* 4(a)(1)(B). Pet. App. B 1. In its order of dismissal, the court noted that, if any relief were available to Parks, it would be by motion to reinstate the appeal to be filed with the court of appeals, and

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[2] Pursuant to *11th Cir. R.* 42-1(b)

not by successive notices of appeal filed in district court.[3] Pet. App. B 1.

Despite this admonition, Parks filed a fourth notice of appeal in the district court on April 1, 1999. Resp. App. 3.

On November 22, 1999, after requesting and receiving positions on jurisdiction, the Eleventh Circuit dismissed Parks' fourth appeal for lack of jurisdiction for failure to timely file a notice of appeal in the district court. Pet. App. A. The order noted, for the second time, that Parks could not reinstate his earlier appeal by filing successive notices of appeal in the district court. Pet. App. A.

From the dismissal of his fourth appeal, Parks petitioned this Court for a Writ of Certiorari on January 5, 2000. Parks' only claim to this Court is that he has a fundamental right to be provided a free, computerized legal database from the government under Amendment IX to the United States Constitution.

## REASONS FOR DENYING THE WRIT

### I. The Court lacks jurisdiction.

It is a fundamental principle of this Court that, in order to grant any order, there must be jurisdiction.[4]

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[3] *11th Cir.* Rule 27-1(c)(11).

[4] *Steel Company v. Citizens for a Better Environment*, ___ U.S. ___, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998).

Indeed, "[w]ithout jurisdiction, the Court cannot proceed at all in any cause."[5]

This Court lacks jurisdiction because Parks' Petition was not filed within ninety days of the Eleventh Circuit's order of dismissal on December 23, 1997. As held in *Missouri v. Jenkins*, this Court has "no authority to extend the period for filing except as Congress permits."[6] 28 U.S.C. § 2101(c) provides specific time requirements for filing a petition for writ of certiorari. § 2101(c) requires that a petition for a writ of certiorari "shall be taken or applied for within ninety days after the entry of such judgment or decree."[7] This ninety day limit is "mandatory and jurisdictional", and a petition that is filed after this limit expires must be dismissed.[8]

For the purposes of § 2101(c), the time period to file a petition for writ of certiorari commences on the date that the judgment or decree below was entered.[9] It is only if the lower court "changes matters of substance or resolves a genuine ambiguity in a judgment previously rendered [that] the period within which an appeal must be taken or petition for certiorari begins to run anew."[10]

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[5] *Ex Parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1888).

[6] *Missouri v. Jenkins*, 495 U.S. 33, 45, 110 S. Ct. 1651, 1660, 109 L.Ed.2d. 31 (1990)

[7] 28 U.S.C. § 2101(c).

[8] *Jenkins*, 495 U.S. at 45.

[9] *Federal Trade Commission v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-12, 73 S. Ct. 245, 247, 97 L.Ed. 245 (1952).

[10] *Id.*

Following the dismissal of his case by the district court, Parks appealed the dismissal to the Eleventh Circuit Court of Appeals. However, this appeal was dismissed on December 23, 1997. Thus, in order to timely comply with § 2101(c), Parks had ninety days from December 23, 1997 in which to file a petition for writ of certiorari. Plainly, Parks has failed to do so since the ninety day period expired on March 24, 1998 and his Petition for Writ of Certiorari was not filed in this Court until January 5, 2000.[11]

Moreover, Parks' filing of three subsequent notices of appeal in the district court did not toll the period for filing his petition for certiorari under § 2101(c). These subsequent appeals were dismissed for lack of jurisdiction as untimely filed under *Fed. R. App. P.* 4(a)(1)(B). Thus, none of the three subsequent orders of dismissal changed any matter or substance or resolved any ambiguity that would toll the time period of § 2101(c).[12] Parks was given more than ample notice of what was required, but simply failed to follow the free directions given.

Since Parks failed to timely file his Petition for Writ of Certiorari in this Court on or before March 24, 1998, it should be dismissed for lack of jurisdiction.

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[11] *28 U.S.C. § 2101(c); Jenkins*, 495 U.S. at 45.

[12] *Minneapolis-Honeywell Regulator Co.*, 344 U.S. at 211-12

**II. Parks' notice of appeal was not timely filed.**

Parks' fourth notice of appeal was not timely filed with the district court, thereby depriving the Eleventh Circuit Court of Appeals of jurisdiction and, consequently, depriving this Court of jurisdiction over this Petition. "[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but that of the lower courts in a cause under review'."[13] When a lower court lacked jurisdiction, this Court has "jurisdiction on appeal, not for the merits, but merely for the purpose of correcting the error of the lower court in entertaining the suit."[14]

Under 28 U.S.C. § 1254(1), Parks may only seek to invoke the jurisdiction of this Court by appealing a "judgment or decree" from the Court of Appeals.[15] As the Eleventh Circuit did not have jurisdiction to consider Parks' fourth notice of appeal, as it explicitly so found in its order of dismissal, this Court does not have jurisdiction to consider certiorari.[16]

It is axiomatic that a court of appeals cannot issue a "judgment or decree" if it lacks jurisdiction to decide the

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[13] *Steel Company*, 118 S. Ct. at 1013; *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S. Ct. 162, 165, 79 L.Ed. 338 (1934).

[14] *Steel Company*, 118 S. Ct. at 1013; *United States v. Corrick*, 298 U.S. 435, 440, 56 S. Ct. 829, 831, 80 L.Ed. 1263 (1936).

[15] *28 U.S.C. § 1254(1).*

[16] *Steel Company*, 118 S. Ct. at 1013.

case.[17] As the Eleventh Circuit did not issue a "judgment or decree," only an order of dismissal, it never assumed jurisdiction over Parks' fourth appeal.

In order to timely file an appeal in the court of appeals, a party must comply with the time requirements of *Fed. R. App. P.* 4(a)(1)(B). Compliance with Rule 4 is "mandatory and jurisdictional" and cannot be waived by the parties.[18] It is undisputed that Parks' fourth notice of appeal was not filed until well after the sixty day time period, allowed under Rule 4(a)(1)(B), expired in June 1997.

As the Eleventh Circuit never assumed nor possessed jurisdiction over Parks' fourth appeal, this Court does not have jurisdiction to consider Parks' Petition.

**III. Parks lacks standing.**

Parks' Petition for Writ of Certiorari should be denied because he has no standing. Although Parks claims that he has a fundamental right to a free, computerized legal database in order to insure access to the courts, Parks has not suffered any "injury in fact" so as to provide him standing to sue. It is clear that, in order to

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[17] *Zipperer by and through Zipperer v. School Bd. of Seminole County, Fla.*, 111 F.3d 847, 850 (11th Cir. 1997).

[18] *Zipperer*, 111 F.3d at 850; *Hollins v. Dept. of Corrections*, 191 F.3d 1324, 1327-8 (11th Cir. 1999); *Ingram v. Acands, Inc.*, 977 F.2d 1332, 1336 (9th Cir. 1992).

bring suit in federal court, a plaintiff must first demonstrate standing.[19] This Court has "insisted on strict compliance with this jurisdictional standing requirement."[20] A plaintiff must show that he has suffered an "injury in fact" that is concrete, actual or imminent, traceable to the defendant, and that the court can likely impose a remedy.[21]

In *Lewis v. Casey*, this Court held that there is no "freestanding right to a law library or legal assistance."[22] In *Lewis*, prison inmates brought suit alleging that access to the courts had been denied because their prison law library facilities were inadequate. Because the inmates could not point to an actual injury in fact, other than mere general allegations of inadequacy, they lacked standing.[23]

Standing requires an actual injury in order to "prevent courts of law from undertaking tasks assigned to the political branches."[24] Moreover, it is not the role of the courts, but that of the political branches, "to shape the

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[19] *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, ___ U.S. ___, 120 S. Ct. 693, 704, ___ L.Ed.2d ___ (2000).

[20] *Raines v. Byrd*, 521 U.S. 811, 820, 117 S. Ct. 2312, 2317-8, 138 L.Ed.2d 849 (1997).

[21] *Friends of the Earth*, 120 S. Ct. at 704; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136-7, 119 L.Ed.2d 351 (1992).

[22] *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2179-2180, 135 L.Ed.2d 606 (1996).

[23] 518 U.S. at 350.

[24] 518 U.S. at 349.

institutions of government in such fashion as to comply with the laws and the Constitution."[25]

In explaining the requirement of an actual injury, this Court analogized the situation of a inmate who was *not* deprived of any necessary medical treatment, yet brings suit on the grounds that the medical facilities were generally inadequate. Such a suit would be dismissed for lack of standing because the prisoner could not state how he was actually injured. Finding such a violation would mean that the "essential distinction between judge and executive would have disappeared" because the courts would then be required to invade the province of the legislature to assure medical care.[26]

Thus, actual injury cannot be demonstrated on the basis that access to courts is denied in "some theoretical sense."[27] Rather, there must be some showing that the alleged shortcomings hindered efforts to file a legal claim, such as the inadequacies being so pervasive as to inhibit the filing of a complaint or providing notice of a technical requirement.[28] This Court then noted that providing sophisticated legal services in the absence of an actual injury amounts to "permanent provision of counsel, which we do not believe the Constitution requires."[29]

Similar to the prisoners' claims in *Lewis*, all Parks has alleged are mere allegations that the "legal might of its

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[25] *Id.*

[26] 518 U.S. at 354.

[27] *Id.*

[28] *Id.*

[29] *Id.*

citizens has been greatly diminished because of the number of laws and the complexity of these laws." Petition, p. 5, ¶ 5. Although Parks alleges that the law in a general, theoretical sense is complex, Parks does not allege that *his* access to the courts has been denied. He wishes for a computerized legal database to be provided to him free of charge, yet he alleged nothing to suggest that he had been specifically injured because he has not had unfettered free access to a facility not yet created.

Thus, Parks had no standing from the outset and thus, his Petition should be denied.

## IV. There is no fundamental right to a free, computerized legal database.

Although Parks' Petition alleges that he has been denied a "fundamental" right, such a right has never been recognized as emanating from the Constitution.

This Court has consistently recognized that the "Due Process Clauses generally confer *no affirmative right to government aid,* even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual."[30] Although due process requires protection against unwarranted government interference, it does not require entitlement to governmental aid, even if it is contended that

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[30] *DeShaney v. Winnebago County Dept. of Social Serv.*, 489 U.S. 189, 194, 109 S. Ct. 998, 1002, 102 L.Ed.2d 249 (1989) (emphasis added).

such aid is necessary.[31] Thus, a governmental entity cannot be sued for failing to provide something that it had no duty to provide.[32]

In *Lewis*, this Court held there is no right to be provided with continuous, free legal assistance.[33] Although prison inmates have been afforded added affirmative duties of care, due, by reason of the incarcerated status, to their inability to care for themselves, this Court explicitly declined to require that even they be afforded "permanent provision of counsel." [34] Despite the general duty to provide a law library to inmates, such a right *does not exist* for private citizens who have not suffered any a deprivation of liberty.[35]

In contrast to the inmates in *Lewis*, Parks has never claimed to have been incarcerated during the pendency of these proceedings. Rather, he is private citizen whose access to the law, particularly to public law libraries readily available to him in the federal and state courthouses, has not been hindered by the restraints affecting prison residents. In fact, his physical access to the law has

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[31] *Id.; Harris v. McRae*, 448 U.S. 297, 317-18, 100 S. Ct. 2671, 2688-2689, 65 L.Ed.2d 784 (1980).

[32] *DeShaney*, 489 U.S. at 197-8.

[33] *Lewis*, 518 U.S. at 351.

[34] 518 U.S. at 354.

[35] *Id.; Bounds v. Smith*, 430 U.S. 817, 821, 828, 97 S. Ct. 1491, 1492-93, 1494, 1498, 52 L.Ed.2d 72 (1977); *see also Estelle v. Gamble*, 429 U.S. 97, 103-104, 97 S. Ct. 285, 290-91, 50 L.Ed.2d 251 (1976).

not been abridged, nor has he ever made such an allegation. His complaint is that what is provided is simply inconvenient.

As an unrestrained citizen, Parks has no fundamental right to be provided unfettered, sophisticated access to the law because the Constitutional concept of due process does not envision it. Thus, neither the federal, state or local governments have any affirmative duty to provide Parks with an free, computerized legal database.[36]

Further, Parks merely complains of an entitlement to be provided such a database.[37] Indeed, his Petition requests this Court to order federal, state or local authorities to establish a "Department of Legal Information" to create, publish, and fund a computerized legal database. Petition, p. 5. Since all Parks seeks is a judicial creation of such a facility, there clearly is no Due Process violation presented.

**V. The Ninth Amendment provides no cause of action.**

The Ninth Amendment does not confer a cause of action upon Parks to claim that he has been denied a "fundamental right" because the Ninth Amendment is a rule of interpretation, rather than an independent source of rights. Although this Court has never specifically addressed this issue, the Courts of Appeal have uniformly rejected alleged claims based upon the Ninth Amendment as a source of substantive constitutional

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[36] *Lewis*, 518 U.S. at 351; *Bounds*, 430 U.S. at 821.

[37] *DeShaney*, 489 U.S. at 197-8.

rights.[38] The Ninth Amendment serves to clarify that the specific enumerated rights found in the Bill of Rights were not intended to foreclose the existence of other fundamental rights.[39] However, it does not specify that it is the source of any particular right.

Thus, Parks' argument that the Ninth Amendment confers a fundamental right upon him to a free, computerized legal database fails, and his Petition should be dismissed.

## VI. Entitlement to a free, computerized legal database is a non-justiciable political question.

Derived from the principle of separation of powers, the judicial branch cannot decide cases or controversies that revolve around policy choices and value determinations constitutionally committed for resolution by the legislative or executive branches.[40] In *Baker v. Carr*, this Court identified six categories of political questions:

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[38] *Froehlich v. State Dept. of Corrections*, 196 F.3d 800, 801 (7th Cir. 1999); *Bernal-Vallejo v. I.N.S.*, 195 F.3d 56, 63 (1st Cir. 1999); *U.S. v. Broussard*, 80 F.3d 1025, 1041 (5th Cir. 1996); *San Diego Gun Club Rights Committee v. Reno*, 98 F.3d 1121, 1125 (9th Cir. 1996); *Cannon v. Group Health Serv. of Oklahoma*, 77 F.3d 1270, 1275-6 (10th Cir. 1996); *Concerned Citizens of Nebraska v. U.S. Nuclear Regulatory Comm'n*, 970 F.2d 421, 426-7 (8th Cir. 1992); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 271 (7th Cir. 1982); *U.S. v. Warin*, 530 F.2d 103, 108 (6th Cir. 1976).

[39] *Froelich*, 196 F.3d at 801; John E. Nowak & Ronald D. Rotunda, *Constitutional Law*, § 11.7 (5th ed. 1995); Laurence H. Tribe, *American Constitutional Law*, 776 n.14 (2d ed. 1988).

[40] *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 230, 106 S. Ct. 2860, 2866, 92 L.Ed.2d 166 (1986).

1. A textually demonstrable constitutional commitment of the issue to a coordinate political department;

2. A lack of judicially discoverable and manageable standards for resolving it;

3. The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;

4. The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government

5. An unusual need for unquestioning adherence to a political decision already made; or

6. The potentiality of embarrassment from multifarious pronouncements by various departments on one question.[41]

Any one of these hallmark categories is sufficient to render a case or controversy non-justiciable as a political question.[42]

Parks admittedly requests this Court to create a new executive agency to *publish and fund* a computerized legal database. Petition, p. 5. It is a request to this Court to substitute itself into the role of the legislative or executive branches and make a policy determination that there should be an *entitlement* to such a database.[43]

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[41] *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 710, 7 L.Ed.2d 663 (1962)

[42] *Id.* at 217.

[43] *Lewis*, 518 U.S. at 351, 354; *DeShaney*, 489 U.S. at 197-8.

The enactment of such a database is "textually committed", under both Article I, §§ 1, 8, cl. 1, 8, cl. 3 (powers of Congress) and Article II, §§ 1, 2 (powers of the President) of the United States Constitution because these provisions provide the mechanism for initiation, enactment and funding of legislation. Moreover, this Court could not make such a decision without implicitly expressing a "lack of respect for a coordinate branch of government".[44]

Generating the requisite funding for a database would be textually committed to Article I, § 8, cl. 1, the "taxing and spending" clause of the United States Constitution. Implementation of such a facility would require standards that cannot be judicially discovered and necessitate a policy determination of what is in the best interests of the citizenry. This is the Constitutional role of the legislative and executive branches.

In short, if Parks determines that there is a compelling need for a free, computerized legal database, he should solicit support for it from his elected representatives since there is no entitlement to establishment by order of the judiciary.

## CONCLUSION

The Petition should be denied for several reasons. This Court lacks jurisdiction because this Petition was not filed timely in either the Court of Appeals or in this

[44] *Baker*, 369 U.S. at 217.

Court. Moreover, Parks has never had standing to sue, nor is there any basis for his claim found in the United States Constitution. The issue he belatedly presents, is a non-justiciable political question.

Respectfully Submitted,

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No. 99-1151

In The

# Supreme Court of the United States

DONALD P. PARKS,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,
STATE OF FLORIDA,
PALM BEACH COUNTY,
THE CITY OF BOYNTON BEACH,

*Respondents.*

**On Petition For Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Eleventh Circuit**

## RESPONDENT'S APPENDIX TO BRIEF IN OPPOSITION

## APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)

"Claim of Unconstitutionality"

(Filed Dec. 31, 1997)

Second APPEAL

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most

*Certificate of Service*

On December 31, 1997 the following parties were sent copies of the Appellant's Second Appeal of case 97-4818 by Mail via the United States Post Office.

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**APPENDIX 2**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-4038 Second Appeal
(Eleventh Circuit Court of Appeals)

"Claim of Unconstitutionality"

(Filed Sept. 22, 1998)

Third APPEAL to the Full Court

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

This is the third appeal of this case involving "Questions of Constitutionally". Because the Constitution is the supreme law of this nation it must follow that any law or rule of order that prevents this Court from hearing and ruling on the Constitutional issues involved

in this case must be unconstitutional.

Since the court(s) have yet to rule on any Constitutional issue raised in this case the appellant does hereby request that this case be heard by the entire court.

**APPENDIX 3**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-4038 Second Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-5464 Third Appeal
(Eleventh Circuit Court of Appeals
to the Full Court)

"Claim of Unconstitutionality"

(Filed April 1, 1999)

Forth APPEAL, Second Appeal to the Full Court

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

This is the forth appeal of this case involving "Questions of Constitutionally". Because the Constitution is the supreme law of this nation it must follow that any law or rule of order that prevents this Court from hearing and ruling on the Constitutional issues involved in this case must be unconstitutional.

Since the court(s) have yet to rule on any Constitutional issue raised in this case the appellant does hereby request that this case be heard by the entire court.

Therefore:

The plaintiff does hereby appeal to this Court to:

1. Hear and make a ruling on the Constitutional issues involved.
2. Issue a Summary Judgment that the Government(s) named in this suit have failed to provide a suitable legal defense for the citizens of the United States and that the Government(s), either individually or jointly, will immediately fund the development of a system as described in the preceding paragraph 9.
3. Overturn the decision rendered by Wilkie D. Ferguson, Jr., United States District Judge for the United States District Court, Southern District, on April 3, 1997 and allow all issues not settled in the preceding paragraph of this case to be heard by the court.

Note 1: The "law", for purposes of this appeal, is defined to include all laws, statutes, rules, regulations, ordinances, and other expressions of any elected, appointed, or hired person that are binding on any citizen of the United States; all documents and computer programs that define the meanings of these laws, statutes, rules, regulations, ordinances, and other expressions; and all documents and computer programs that define how these laws, statutes, rules, regulations, ordinances, and other expressions are to be enforced.

/s/ Donald P. Parks
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April 1, 1999